

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/825,972

Art Unit: 2617

Filed: 04/16/2004

Confirmation No.: 8222

Appellants: Andrew Michael Allen et al.

Examiner: Muthuswamy Ganapathy Manoharan

Title: METHOD AND APPARATUS FOR DYANMIC GROUP ADDRESS CREATION

Docket No.: 291010-00036

---

Mail Stop Appeal Brief - Patents  
Commissioner of Patents  
P.O. Box 1450  
Alexandria, V.A. 22313-1450

Dear Sir/Madam:

**APPEAL BRIEF**

This Appeal Brief is submitted pursuant to the Notice of Non-Compliant Appeal Brief issued by the U.S. Patent and Trademark Office on April 27, 2009, and in support of the appeal from the final rejection(s) set forth in the Office Action mailed on September 30, 2008.

**The undersigned believes there to be no fee due as the payment of the Appeal Brief fee, in the amount of \$540.00, was previously paid with the initial Appeal Brief on March 30, 2009. Please charge any additional fee or credit any overpayment to Eckert Seamans Cherin & Mellott, LLC Deposit Account No. 02-2556.**

## **Table of Contents**

**Real Party in Interest** begins on page 3.

**Related Appeals and Interferences** begins on page 4.

**Status of Claims** begins on page 5.

**Status of Amendments** begins on page 6.

**Summary of Claimed Subject Matter** begins on page 7.

**Grounds of Rejection to be Reviewed on Appeal** begin on page 11.

**Arguments** begin on page 13.

**Claims Appendix** begins on page 32.

**Evidence Appendix** begins on page 44.

**Related Proceedings Appendix** begins on page 45.

**Real Party in Interest**

The real party of interest is Research In Motion Limited, by virtue of an assignment executed by the inventors in favor of Research In Motion Limited, recorded at Reel/Frame 015166/0187.

**Related Appeals and Interferences**

None.

### Status of Claims

As stated in the Office Action mailed September 30, 2008, the status of the claims appears to be as follows:

Claims 1-64 were previously cancelled.

Claims 65-71, 74, 75, 79-81, 83, 84, 86, 87, 94-100, 103-110, 113, 114, 116 and 117 stand rejected under 35 U.S.C. § 102(e) as being anticipated by *Torvinen et al.* (U.S. Patent Publication No. 2005/0113123).

Claims 72 and 73 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Torvinen et al.* (U.S. Patent Publication No. 2005/0113123) in view of *Amir* (WO 01/97539).

Claims 76-78 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Torvinen et al.* (U.S. Patent Publication No. 2005/0113123) in view of *Griffin et al.* (U.S. Patent No. 7,072,941).

Claim 85 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over *Torvinen et al.* (U.S. Patent Publication No. 2005/0113123) in view of *Laiho* (U.S. Patent No. 6,097,942).

Claim 86 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over *Torvinen et al.* (U.S. Patent Publication No. 2005/0113123) in view of *Chandhok et al.* (U.S. Patent Publication No. 2004/0198376).

Claims 89-92 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Torvinen et al.* (U.S. Patent Publication No. 2005/0113123) in view of *Leigh et al.* (U.S. Patent No. 5,535,426).

Claims 93 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over *Torvinen et al.* (U.S. Patent Publication No. 2005/0113123) in view of *Requena* (U.S. Patent Publication No. 2002/0126701).

The rejections of claims 65-117 are being appealed.

There are, however, several inconsistencies between the Examiner's stated rejections and the associated text. For example, while the heading to the 35 U.S.C. § 102(e) rejection found on page 3 of the Office Action states that Claims 65-71 and 94-100 are rejected under 35 U.S.C. 102(e), the Appellants cannot find any basis in the

Office Action for the rejection of Claims 66, 67, and 94-100 under 35 USC 102(e). The Appellants note that claims 66 and 67 appear to be rejected under 35 U.S.C. 103(a) at pages 8-9 of the Office Action, although there is no reference to the rejection prior to the Examiner's statement of rationale. A statement is found at page 14 of the Office Action under a rejection under 35 U.S.C. 103(a) that purports to reject claims 94-102 for the same reasons as Claims 65-73. However, Claims 65-71 were rejected under 35 U.S.C. 102(e) and Claims 72 and 73 were rejected under 35 U.S.C. 103(a). As set forth below, Appellants have attempted to address the rejections of these claims as set forth in the written rejections as opposed to an identification in a heading.

Further, Appellants note that reference WO 01/97539 was filed, *inter alia*, by Amir Dorot and, as such, should be identified as *Dorot et al.* The Examiner, however, has identified this reference as "*Amir.*" For the sake of consistency, Appellants shall follow the Examiner's example and identify this reference as "*Amir.*"

### **Status of Amendments**

No amendments were presented subsequent to the Examiner's Action of September 30, 2008. No amendments have been made since a new claim set was submitted on September 5, 2006.

### **Summary of Claimed Subject Matter**

The present claims are directed to a method and apparatus for dynamically creating group addresses for facilitating communications among a group of users. More specifically, the present claims provide for methods and an apparatus for facilitating dynamic group creation for push-to-talk over Cellular (PoC) group communication sessions, instant messaging sessions, chat, and other communications.

In one embodiment, the method comprises receiving at least one rule defining a member of the dynamic group in association with a group address and populating the dynamic group with members from the mobile stations determined in accordance with the at least one rule. Rules may be defined with reference to presence and/or location information available for the mobile stations. Such information may be published on behalf of the stations to one or more servers adapted to identify mobile stations matching the rules. The method may comprise subscribing to the servers to obtain the matching mobile stations with which to populate dynamic group addresses.

Independent Claim 65 defines a method (FIGS. 5 and 6) of creating and managing a group of mobile stations for a communication session in a communications network. The communication session is one in which users of respective mobile stations communicate with one another. (paragraphs 0010; 0060) The method comprises: publishing information about one or more particular users of respective mobile stations to the communications network (paragraphs 0010; 0048; 0054; 0063); and receiving at least one rule defining a member of the group, the at least one rule defining group members based on criteria comprising published information about respective users of mobile stations (paragraph 0010; 0062), the at least one rule being received in association with a group address (paragraphs 0043; 0048; 0052; 0053; 0057); and dynamically populating the group with members, the populating comprising (paragraphs 0010; 0080): determining mobile stations having respective users with published information on the communications network that matches the published information criteria of the at least one rule (paragraphs 0044; 0072-0081); and populating the group with the mobile stations having respective users with published information on the communications



network that matches the published information criteria of the at least one rule (paragraphs 0010; 0080).

Independent Claim 94 defines a server (FIGS. 1, 3, 4) for creating and managing a group of mobile stations for a communication session in a communications network. The communication session is one in which users of respective mobile stations communicate with one another. (paragraphs 0010; 0060) The server comprises: a communication system for transmitting and receiving messages via the communications network; a processor coupled to the communication system for processing messages; and memory coupled to the processor for storing instructions to configure the processor to (FIGS. 1 and 2): publish information about one or more particular users of respective mobile stations to the communications network (paragraphs 0010; 0048; 0054; 0063); and receive at least one rule defining a member of the group, the at least one rule defining group members based on criteria comprising published information about respective users of mobile stations (paragraph 0010; 0062), the at least one rule being received in association with a group address (paragraphs 0043; 0048; 0052; 0053; 0057); and dynamically populate the group with members, the populating comprising (paragraphs 0010; 0080): determining mobile stations having respective users with published information on the communications network that matches the published information criteria of the at least one rule (paragraphs 0044; 0072-0081); and populating the group with the mobile stations having respective users with published information on the communications network that matches the published information criteria of the at least one rule (paragraphs 0010; 0080).

Independent Claim 103 defines a method of operating a server for creating and managing a group of mobile stations for a communication session in a communications network. The communication session is one in which users of respective mobile stations communicate with one another. (paragraphs 0010; 0060) The method comprises: publishing information about one or more particular users of respective mobile stations to the communications network (paragraphs 0010; 0048; 0054; 0063); and receiving at least one rule defining a member of the group, the at least one rule defining group members based on criteria comprising published information about respective users of mobile stations (paragraph 0010; 0062), the at least one rule being received in association with a

group address (paragraphs 0043; 0048; 0052; 0053; 0057); and dynamically populating the group with members, the populating comprising (paragraphs 0010; 0080): determining mobile stations having respective users with published information on the communications network that matches the published information criteria of the at least one rule (paragraphs 0044; 0072-0081); and populating the group with the mobile stations having respective users with published information on the communications network that matches the published information criteria of the at least one rule (paragraphs 0010; 0080).

Independent Claim 104 defines a mobile station for initiating a communication session among other mobile stations in a communication network (FIGS. 1 and 2). The communication session is one in which users of respective mobile stations communicate with one another. (paragraphs 0010; 0060) The mobile station comprises: a transceiver adapted to transmit and receive messages via the communication network; a processor coupled to the transceiver, the processor adapted to process messages; and a memory coupled to the processor, the memory adapted to store instructions to configure the processor to (FIG. 2; Paragraphs 0029-0039): transmit, to a server adapted to create and manage a group of mobile stations, information to be published to the communications network about one or more particular users of respective mobile stations (paragraphs 0010; 0048; 0054; 0063); and transmit at least one rule defining a member of the group to the server (paragraph 0010; 0062), the at least one rule defining group members based on criteria comprising published information about respective users of mobile stations, wherein the at least one rule is associated with a group address (0043; 0048; 0052; 0053; 0057) and is used to populate the group with members consisting of mobile stations having respective users having published information about the one or more particular users on the communications network that matches the published information criteria of the at least one rule (paragraphs 0010; 0080).

Independent Claim 113 defines a method of operating a mobile station for initiating a communication session among other mobile stations in a communication network (FIGS. 5 and 6). The communication session is one in which users of respective mobile stations communicate with one another (paragraphs 0010; 0060). The method comprises: transmitting information about one or more particular users of respective

mobile stations to a server adapted to create and manage a group for publishing to the communications network (paragraphs 0010; 0048; 0054; 0063); and transmitting the at least one rule defining a member of the group to the server (paragraph 0010; 0062), the at least one rule defining group members based on criteria comprising published information about respective users of mobile stations, wherein the at least one rule is associated with a group address (0043; 0048; 0052; 0053; 0057) and is used to populate the group with members consisting of mobile stations having respective users having published information about the one or more particular users on the communications network that matches the published information criteria of the at least one rule (paragraphs 0010; 0080).

Independent Claim 114 defines a method of creating and managing a group of mobile stations for a communication session in a communications network (FIGS. 5 and 6). The communication session is one in which users of respective mobile stations communicate with one another (paragraphs 0010; 0060). The group is associated with a group address and is defined by at least one rule. (0043; 0048; 0052; 0053; 0057) The method comprises: publishing an interest of one or more users to the communications network (paragraphs 0010; 0048; 0054; 0063); and determining mobile stations having respective users with an interest published to the communications network which matches an interest for participating in the group defined by the at least one rule (paragraphs 0044; 0072-0081); and dynamically populating the group with members comprising mobile stations having respective users with an interest published to the communications network which matches the interest for participating in the group defined by the at least one rule (paragraphs 0010; 0080).

#### **Grounds of Rejection to be Reviewed on Appeal**

The Appellants seek to appeal the following grounds of rejection (based on the interpretation of the Examiner's rejections set forth above):

1) whether Claims 65, 68-71, 74, 75, 79-81, 83, 84, 86, 87, 94-100, 103-110, 113, 114, 116, and 117 are unpatentable under 35 U.S.C. § 102(c) over *Torvinen* (U.S. Patent Publication No. 2005/0113123);

2) whether Claims 66, 67, 72 and 73 are unpatentable under 35 U.S.C. § 103(a) over *Torvinen* (U.S. Patent Publication No. 2005/0113123) in view of *Amir* (International Patent Publication No. 01/97539);

3) whether Claims 76-78 are unpatentable under 35 U.S.C. § 103(a) over *Torvinen* (U.S. Patent Publication No. 2005/0113123) in view of *Griffin et al.* (U.S. Patent No. 7,072,941);

4) whether Claim 85 is unpatentable under 35 U.S.C. § 103(a) over *Torvinen* (U.S. Patent Publication No. 2005/0113123) in view of *Laiho* (U.S. Patent No. 6,097,942);

5) whether Claim 86 is unpatentable under 35 U.S.C. § 103 (a) over *Torvinen* (U.S. Patent Publication No. 2005/0113123) in view of *Chandhok et al.* (U.S. Patent Publication No. 2004/0198376);

6) whether Claims 89-92 are unpatentable under 35 U.S.C. § 103(a) over *Torvinen* (U.S. Patent Publication No. 2005/0113123) in view of *Leigh et al.* (U.S. Patent No. 5,535,426);

7) whether Claim 93 is unpatentable under 35 U.S.C. § 103(a) over *Torvinen* (U.S. Patent Publication No. 2005/0113123) in view of *Requena* (U.S. Patent Publication No. 2002/0126701);

8) whether Claims 94-102 are unpatentable either 35 U.S.C. § 102(e) over *Torvinen* (U.S. Patent Publication No. 2005/0113123) or unpatentable under 35 U.S.C. § 103(a) over *Torvinen* (U.S. Patent Publication No. 2005/0113123) in view of *Amir* (International Patent Publication No. 01/97539) [note: the Examiner's rejection at page 14 of the Office Action is ambiguous in this regard]; and

9) whether Claims 103-112 are unpatentable either 35 U.S.C. § 102(e) over *Torvinen* (U.S. Patent Publication No. 2005/0113123) or unpatentable under 35 U.S.C. § 103(a) over *Torvinen* (U.S. Patent Publication No. 2005/0113123) in view of *Amir* (International Patent Publication No. 01/97539) [note: the Examiner's rejection at page 14 of the Office Action is ambiguous in this regard].

### Argument

**Rejection under 35 U.S.C. 102(e) of Claims 65, 68-71,74, 75, 79-81, 83, 84, 86, 87, 94-100, 103-110, 113, 114, 116 and 117 over *Torvinen* (U.S. Patent Publication No. 2005/0113123).**

*Torvinen* is concerned primarily with group formation and with location information. *Torvinen* describes a method and system for organizing a group session between members based on their location or proximity and the technical capabilities considered to be necessary to engage in the group session, as determined by the organizing terminal. While *Torvinen* makes brief reference to presence servers, *Torvinen* does not teach or suggest publishing information about one or more particular users of respective mobile stations to the communications network. *Torvinen* also fails to teach or suggest many of the other features recited by the pending claims, for example Claim 65.

***Torvinen fails to teach or suggest publishing information about one or more particular users of respective mobile stations to the communications network.***

At page 3 of the Office Action, dated December 4, 2006, the Examiner states that *Torvinen* does not disclose publishing information about one or more particular users of respective mobile stations to the communications network. The Appellants agree with the Examiner in this regard and submits that the Examiner is correct.

At page 3 of the Office Action, dated June 18, 2007, the Examiner states that *Torvinen* does not disclose publishing information about one or more particular users of respective mobile stations to the communications network. The Appellants agree with the Examiner in this regard and submits that the Examiner is correct.

At page 8 of the Office Action, dated December 12, 2007, the Examiner states that *Torvinen* does not disclose publishing information about one or more particular users of respective mobile stations to the communications network. The Appellants agree with the Examiner in this regard and submits that the Examiner is correct.

On September 30, 2008, the Examiner issued an Office Action in response to the Appeal Brief filed by the Appellants on July 15, 2008. The Appeal Brief presented, *inter alia*, arguments as to why the Examiner's final rejections of Claims 65-71,74, 75, 79-81,

83, 84, 86, 87, 94-100, 103-110, 113, 114, 116, and 117 as being unpatentable under 35 U.S.C. § 103(a) over *Torvinen* (U.S. Patent Publication No. 2005/0113123) in view of *Fraccaroli* (U.S. Patent Publication No. 2004/0002348) were without basis. In the Office Action of September 30, 2008, the Examiner contradicts himself, reverses his position, and now states that *Torvinen* does disclose publishing information about one or more particular uses of respective mobile stations to the communications network.<sup>1</sup>

The Appellants respectfully disagree with the Examiner's current position and submit that the Examiner's own interpretation set forth on December 4, 2006, June 18, 2007, and December 12, 2007, and stating that *Torvinen* **does not** disclose publishing information about one or more particular users of respective mobile stations to the communications network, is correct.

Claim 65 is directed to a method of creating and managing a group of mobile stations for a communication session in a communications network. The communication session is one in which users of respective mobile stations communicate with one another. The method comprises the steps of **publishing information about one or more particular users of respective mobile stations to the communications network**, and receiving at least one rule for defining a member of group. The at least one rule is **defined by criteria comprising published information about respective users of mobile stations and is received in association with a group address**. The group is then **dynamically populating** with members having published information that matches the published information criteria of the at least one rule.

With respect to the claimed publishing information about one or more particular users of respective mobile stations to the communications network, the Examiner points to item 510 of Figure 5 of *Torvinen*, as well as paragraphs 0062, 0068, 0011, and 0014.

*Torvinen* is concerned with location information. Although the term "location/presence servers" is mentioned in passing in paragraph 29, this is clearly in the context of location services and is not relevant to published information about one or more particular users of respective mobile stations as recited in Claim 65. It is unclear

---

<sup>1</sup> It is submitted that this sort of piecemeal examination does not advance that prosecution of this case, is forbidden under MPEP § 707.07(g), and is fundamentally unfair to the Appellants, who have invested substantial time and expense responding in good faith to the Office Actions of December 4, 2006, June 18, 2007, and December 12, 2007.

what is meant by this passing reference. At best, one may argue that *Torvinen* suggests that location information may be stored on a presence server – not published. However even this interpretation of *Torvinen* is tenuous given this mere passing reference. Either way, the use of published information about a user in creating a group for a group communication session is not discussed anywhere in *Torvinen*.

In the present application, the use of published information about the user provides for user-centric criteria to be used in defining a group, and may include such things as personal preferences (e.g. food preferences for creating a lunch group), common interests (e.g. hobbies for creating a recreational or social group), and/or a group of preselected mobile stations (e.g. friends) – see for example claims 66-67. *Torvinen* determines potential group members to invite to a group session based on location/proximity information and the technical capabilities determined to be necessary to engage in the group session as determined by the organizing terminal.

Location information, as that term is used in *Torvinen*, is a term of art which would be readily understood by a skilled worker in the industry. “Location information” is information about the actual location of the mobile station that is determined, verified, and maintained by the communication network, for example by communications between the mobile device and local base stations, etc. Published information, in contrast, is information published by a mobile station on behalf of a user to the communication network, thereby making such information available to other users to view.

The claimed **published information** is explicitly recited in Claim 65 as **being about one or more particular users of respective mobile stations**. Published information about one or more particular users is defined by the application and explicitly recited in Claims 66-67 and, while it may include location information entered by the user, the published information relates to a mood of the user or state, or user-based criteria. For example, Claim 66 explicitly states that the published information criteria of the at least one rule comprises at least one characteristic of respective users of mobile stations. Claim 67 explicitly recites that the published information criteria of the at least one rule comprises at least one personal preference and/or at least one common interest of respective users of mobile stations.

It is noted that, while the heading on page 3 of the Office Action of September 30, 2008, purports to reject Claims 66-67 as being anticipated by *Torvinen*, in fact no rationale is found in the Office Action that provides a basis for this rejection. It is not until the obviousness rejection found on pages 8-9 that the Examiner provides a basis of rejection for Claims 66-67, and the Examiner's rationale refers to a second reference (*Amir*). It is submitted that the Examiner's need to rely on a second reference to find "published information about one or more particular users of respective mobile stations" within the meaning given to that term by the present application, by Claim 65, and as explicitly defined in Claims 66-67, is evidence that *Torvinen* does not teach or suggest published information about one or more particular users of respective mobile stations, according to the meaning given to that term by the present application. The rejection of Claims 66-67 is discussed in more detail below. The Appellants again submit that the Examiner's own interpretation set forth on December 4, 2006, June 18, 2007, and December 12, 2007, and stating that *Torvinen* **does not** disclose publishing information about one or more particular users of respective mobile stations to the communications network, is correct.

Further, "Location information", as that term is used in *Torvinen*, is not published to a communication network nor is it accessible by other users of the network, rather it is managed and accessible only by the location server of *Torvinen* (clearly shown in FIG. 5 of *Torvinen*). Although the present application contemplates what is described as "published" location information (see Claim 68), this is different than the type of location information contemplated by *Torvinen* which is managed by the location server of *Torvinen*.

The "published" location information about the user referred to in Claim 68 is distinct from regular location information managed by the communication network. Here, the "published" location information is that published by a respective mobile station on behalf of its user to the communication network which may, in fact, be incorrect or false because it is based on what the user says the location is. Although "proper" location information may also be used (e.g., Claim 70), this is in addition to the published information.



The Examiner also points to a barrage of other features in *Torvinen* to allege that *Torvinen* discloses publishing information about one or more particular users of respective mobile stations to the communications network. For example, the Examiner now points to capability information and group service definitions described by *Torvinen*. However, neither the capability information nor the group service definitions of *Torvinen* are information about one or more particular users of respective mobile stations, nor are the capability information nor the group service definitions published to the communications network. Further, it is submitted that the Examiner cannot point to multiple features in *Torvinen* for the purpose of showing the claimed publishing information about one or more particular users of respective mobile stations to the communications network, in the hopes that one of these features will “stick” under appeal. This approach neither advances the prosecution of the case, nor provides the Appellants with the proper examination to which it is entitled.

In summary, the use of published information about a user to define a group, and then populating the group with members having published information which matches the published information in the group definition is not disclosed by *Torvinen* in any way, nor is it suggested by *Torvinen*.

***Torvinen fails to teach or suggest receiving at least one rule defining a member of the group, the at least one rule defining group members based on criteria comprising published information about respective users of mobile stations, the at least one rule being received in association with a group address.***

With regards to the feature of receiving at least one rule defining a member of the group, the at least one rule defining group members based on criteria comprising published information about respective users of mobile stations, the at least one rule being received in association with a group address, the Examiner points to paragraph 0013 and paragraph 0016 of *Torvinen*.

The sections of *Torvinen* cited by the Examiner refer to creating a group of mobile terminals that fall within a session area and meet minimum capabilities, and then providing to those terminals a server address used by potential group attendees to access the server. As previously outlined above, neither the location information used by

*Torvinen* to determine whether or not terminals fall into the session area nor the capabilities of the terminals of *Torvinen* are the same as the claimed published information about respective users of mobile stations.

Further, as claimed, the received rule is received in association with a group address. In contrast, at paragraph 0016, *Torvinen* describes sending a server address to potential group attendees to be used by those potential group attendees. *Torvinen* does not teach or suggest receiving at least one rule defining a member of the group, the at least one rule being received in association with a group address, as claimed.

***Torvinen fails to teach or suggest dynamically populating the group with members, the populating comprising: determining mobile stations having respective users with published information on the communications network that matches the published information criteria of the at least one rule; and populating the group with the mobile stations having respective users with published information on the communications network that matches the published information criteria of the at least one rule.***

With regards to the claimed feature of dynamically populating the group with members, recited above, the Examiner points to paragraphs 0029 and 0014 of *Torvinen*. In addition to the Appellants' position that *Torvinen* fails to teach or suggest the claimed published information, the Appellants are not able to find anything in these sections cited by the Examiner, or anywhere in *Torvinen*, that teaches or suggests **dynamically** populating the group with members, as claimed. In contrast, paragraph 0016, also cited by the Examiner, explicitly states that potential group attendees are merely identified and an invitation in the form of a server address is sent to the potential group attendees. The potential attendees must then manually access the server to join the group. Therefore, *Torvinen* not only fails to teach or suggest **dynamically** populating the group with members, as claimed, but rather explicitly teaches in the opposite direction.

### ***Conclusion***

In conclusion, it is submitted that *Torvinen* fails to teach or suggest all of the features recited by Claim 65, in the manner described by Claim 65. For this reason, it is submitted that Claim 65 recites patentable subject matter and the rejection should be reversed.

Independent Claims 94, 103, 104, 113, and 114 were also rejected on the same basis and are patentable for the same reasons. The remaining claims are dependent on Claims 65, 94, 103, 104, 113, and 114 and are patentable for the same reasons.

The Board of Appeals is thus respectfully asked to reverse the rejections of Claims 65, 94, 103, 113, 114, and the respective dependent claims under 35 U.S.C. 102(e).

**Rejections under 35 U.S.C. § 103(a)**

***The Examiner Has Not Properly Supported the 35 U.S.C. § 103 Rejections and has Failed to Establish a prima facie Cases of Obviousness.***

*(a) The Examiner has not Properly Supported the 35 U.S.C. § 103 Rejections*

With regard to the determination of obviousness under 35 U.S.C. § 103, the Supreme Court has recently stated that:

Although common sense directs one to look with care at a patent application that claims as innovation the combination of two known devices according to their established functions, *it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.* This is so because inventions in most, if not all, instances rely on building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known. (Emphasis added.)

*KSR International Co. v. Teleflex Inc.*, \_\_ U.S. \_\_, 2007 WL 1237837 (2007), (Slip Opinion at 14-15).

In addition, the Supreme Court also noted that:

Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, *this analysis should be*

*made explicit. See In re Kahn*, 441 F.3d 977, 988 (Fed Cir. 2006) ("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, *there must be some articulated reasoning with some rational underpinnings to support the legal conclusion of obviousness*"). (Emphasis added.)

*Id.*, at \_\_ (Slip Opinion at 14).

It is noted that the Supreme Court included an extended discussion reciting the nature of the inventions disclosed in the prior art and then several paragraphs identifying the rationale and reasons that the cited art could be combined and why one skilled in the art would make such a combination. *Id.*, at \_\_ (Slip Opinion at 3-6, 20-22).

With regard to combining known elements of an invention, the Supreme Court further stated that, "[A] patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art." *Id.*, at \_\_ (Slip Opinion at 14). This holding comports with *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988), which held that although some of the cited references may individually have some of the claimed inventions' features, "one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to depreciate the claimed invention." *Id.* at 1075. Instead, to reach the proper conclusion under § 103:

the decision maker must step backward in time and into the shoes worn by [a person having ordinary skill in the art] when the invention was unknown and just before it was made. In light of *all* the evidence, the decision maker must then determine whether.. .the claimed invention as a whole would have been obvious at *that* time to *that* person.

*Id.* at 1073-74.

It is further noted that the requirement for an "articulated reasoning" is not a minor point in *KSR Int'l*. The requirement for an "articulated reasoning," or a similar statement, is set forth in no less than three MPEP sections relating to obviousness rejections. See MPEP §§ 2141, 2142, and 2143. More specifically, MPEP § 2141 states, "Office personnel **must** therefore ensure that the written record includes findings of fact concerning the state of the art and the teachings of the references applied. In certain

circumstances, it may also be important to include **explicit findings** as to how a person of ordinary skill would have understood prior art teachings, or what a person of ordinary skill would have known or could have done. **Factual findings** made by Office personnel **are the necessary** underpinnings to establish obviousness. ” (Emphasis added). MPEP § 2142 notes that, “[t]he Federal Circuit has stated that ‘**rejections on obviousness cannot be sustained with mere conclusory statements**; instead, there must be some **articulated reasoning** with some rational underpinning to support the legal conclusion of obviousness.’ *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006).” (Emphasis added). MPEP § 2143 states, “The **key** to supporting any rejection under 35 U.S.C. 103 **is the clear articulation** of the reason(s) why the claimed invention would have been obvious.” (Emphasis added).

Additionally, and as set forth in MPEP § 2141.02, a “prior art reference must be considered in its entirety, *i.e.*, as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).” Further, “[i]f the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).” See, MPEP 2143.01(V). Finally, “If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).” See, MPEP 2143.01(VI).

It is submitted that the Examiner has not properly supported the rejections under 35 U.S.C. § 103(a) and under *KSR International*. At multiple locations in the Office Action, the Examiner identifies first elements in *Torvinen* and one or more second elements in other references and then states that these elements may be combined. For example, at page 8 of the September 30, 2008, Office Action, the Examiner states that, *Torvinen* teaches all the particulars of Claim 66, except where published information criteria of the at least one rule comprises at least one characteristic of respective users of mobile stations. The Examiner then states that, “*Amir* teaches in an analogous art, the method, wherein the published information criteria of the at least one rule comprises at

least one characteristic of respective users of mobile stations." The Examiner then concludes that, "it would be obvious to one of ordinary skill in the art at the time of invention to use the method, wherein the published information criteria of the at least one rule comprises at least one characteristic of respective users of mobile stations." Thus, the Examiner has merely identified selected elements (*e.g.*, [X and Y] from the cited art, and stated that, "it would have been obvious to one of ordinary skill in the art at the time the invention was made to use [X]/[Y]." Each obviousness rejection contains a similar conclusory sentence. The totality of the Examiner's motivation for this combination is found at the bottom of page 8, which states, "This type of method it acts as a filter, since it tries to organize group among subscribers with similar characteristic."

Appellants believe that such single conclusory sentences for each detailed rejection are not sufficient to qualify as an "articulated reasoning with some rational underpinnings to support the legal conclusion of obviousness" and that the Examiner has failed to make the analysis explicit. Such an explicit analysis would be similar to the analysis provided by the Supreme Court in *KSR International*, which noted the elements in question and detailed how one skilled in the art would assemble, and even alter, these elements to arrive at the invention recited in the patent at issue. Moreover, the Court in *KSR International* specifically states that a mere conclusory statement cannot sustain a determination of obviousness.

In its various responses, the Appellants have repeatedly asked the Examiner to provide sufficient basis for the obviousness rejections. The Examiner has continuously failed to address the substance of Appellants' arguments; namely, that a rejection under 35 U.S.C. § 103(a) and under *KSR International* requires an "articulated reasoning with some rational underpinnings to support the legal conclusion of obviousness" and that articulated reasoning must be explicit. As stated in *KSR International*, **a mere conclusory statement cannot sustain a determination of obviousness.**

Appellants believe that the Examiner's inability to find proper motivation as to why one skilled in the art would modify the teachings of *Torvinen* with the various references applied in the obviousness rejections is expected. The Appellants point out that analogous fields in the electrical arts are not broad categories. *See e.g. Wang Laboratories, Inc. v. Toshiba Corp.*, 993 F.2d 858 (Fed. Cir. 1993) which held that

single, in-line memory modules (SIMMs) for industrial use were not analogous prior art for an invention relating to SIMMS in personal computers.

For example, in the first obviousness rejection of Claims 66, 67, 72 and 73 the Examiner has cited *Amir* (PCT Patent App. Pub. No. WO/0197539) in combination with *Torvinen* as rendering these claims obvious. *Amir* discloses a method and system for broadcasting messages to a plurality of cellular telephones of a targeted group of subscribers where the subscribers have at least one subscriber characteristic (which may be a personal characteristic of a subscriber or an operational characteristic of the telephone) considered to be suitable for broadcast of the message.

Unlike the claimed subject matter of Claims 65 to 93 which is directed to organizing a group for a group communication session, *Amir* is directed to broadcasting messages for display on cellular telephone. Although the Examiner states that *Amir* is an analogous art, broadcasting messages for display on a telephone (as in *Amir*) and creating and managing a group for a group communication session (as in *Torvinen*) cannot fairly be considered analogous even though they both may be implemented on a hand-held communication device. *Amir* provides a targeted marketing system for displaying advertising messages or the like on a phone based on subscriber characteristics stored on a database in a subscriber profile or the like. This information could be collected via different means. *Amir* effectively provides an electronic SPAM-type marketing approach but applied to display-enabled cellular phones rather than email. In the claimed subject matter, a group communication session such as a group chat is being organized. Although *Amir* targets a group of subscribers based on their subscriber profiles to direct an advertising message at one time, *Amir* is not concerned with organizing a group communication session between users.

In addition, the system of *Amir* does not use published information about users to determine to whom the broadcast message should be sent, rather *Amir* relies on stored subscriber characteristics obtained about users (subscribers) held in a database. There is no teaching or suggestion in *Amir* to use published information, and in fact such an adaptation would counter the purpose of *Amir* since subscribers could publish information about themselves which would cause them not to receive the targeted messages so as to avoid this electronic “SPAM”. In this way, *Amir* teaches away from

the claimed subject matter. Thus, there is no motivation or teaching in either *Torvinen* or *Amir* to combine these references. Even when combined, *Torvinen* and *Amir* do not arrive at the claimed subject matter. The Appellants submit that the Examiner's failure to properly provide motivation for combining the various references under the various obviousness rejections are due to fact that there is no motivation in the references for making the various combinations and/or modifications proposed by the Examiner.

The Examiner has merely made a number of loose statements about *Torvinen* and the multiple other references (*Amir*, *Griffin*, *Laiho*, *Chandhok*, *Leigh*, *Requena*) without addressing the crux of the matter. A properly reasoned rejection under 35 U.S.C. § 103 would need, at the very least, to answer the question as to what would lead a person of ordinary skill in the art, who begins with the *Torvinen* reference, to look at the other references, namely *Amir*, *Griffin*, *Laiho*, *Chandhok*, *Leigh*, and *Requena*. Furthermore, it remains incumbent upon the Office to explain how a person of ordinary skill would have, in the very first place, *recognized* that subject matter described by the various references would be relevant to arriving at the method of creating and managing a group of mobile stations for a communication session in a communications network, presently claimed. Why would one skilled in the art concerned with the problem of mobile station group communications sessions refer to references such as *Amir* that do not even concern group formation? These questions remain unanswered by the various Office Actions to date, despite repeated requests by the Appellants.

Therefore, based on the argument above, it is submitted that the Examiner has not properly supported the rejections under 35 U.S.C. § 103(a) and has failed to establish *prima facie* cases of obviousness in all 35 U.S.C. § 103(a) rejections. The Appellants submit that all rejections under 35 U.S.C. § 103(a) should be reversed on this basis alone. The various 35 U.S.C. § 103(a) rejections are addressed individually below.

**Rejection of Claims 66, 67, 72, and 73 as being unpatentable under 35 U.S.C. § 103(a) over *Torvinen* (U.S. Patent Publication No. 2005/0113123) in view of *Amir* (WO 01/097539).**

In respect of Claims 66, 67, 72 and 73, the Examiner combines a second reference (*Amir*) with *Torvinen* in respect of a rejection under 35 U.S.C. § 103(a). Therefore, it is



submitted that the rejection under *Torvinen* and *Amir* is deficient for all the reasons argued above. Specifically, *Torvinen* and/or *Amir* fail to teach or suggest a method that includes the steps of publishing information about one or more particular users of respective mobile stations to the communications network, and receiving at least one rule for defining a member of a group, where the at least one rule is defined by criteria comprising published information about respective users of mobile stations and is received in association with a group address. *Amir* fails to cure these deficiencies. Further, it was submitted above that the combination of *Torvinen* with *Amir* is improper, because *Torvinen* and *Amir* are non analogous art and the Examiner has failed to provide proper a proper basis for combining *Torvinen* with *Amir*.

Further, the Examiner's statements of motivation to combine, found at page 8 of the Office Action of September 30, 2008, are again mere conclusory statements of the type prohibited under *KSR International*. Therefore, it is further submitted that the Examiner has failed to properly establish a *prima facie* case of obviousness.

Further yet, the Examiner has previously admitted using hindsight in his obviousness analysis (see pages 4-5 of the Final Office Action of December 12, 2007). This is strictly impermissible (*In re Fine*, 837 F.2d 1071 at 1075, 5 USPQ2d 1596). It is submitted that the number of references relied on by the Examiner to reject the claims (two in the present rejection, and seven in total) is a telling indication of the impermissible use of hindsight.

For the reasons given above, the Board of Appeals is respectfully asked to reverse the rejections of Claims 66, 67, 72, and 73 under 35 U.S.C. 103(a).

**Rejection of claims 76-78 as being unpatentable under 35 U.S.C. § 103(a) over *Torvinen* (U.S. Patent Publication No. 2005/0113123) in view of *Griffin et al.* (U.S. Patent No. 7,072,941).**

In respect of Claims 76-78, the Examiner combines a third reference (*Griffin*) with *Torvinen* in respect of a rejection under 35 U.S.C. § 103(a). Therefore, it is submitted that the rejection under *Torvinen* and *Griffin* is deficient for all the reasons argued above with respect to *Torvinen*. Specifically, *Torvinen* fails to teach or suggest a method that includes the steps of publishing information about one or more particular

users of respective mobile stations to the communications network, and receiving at least one rule for defining a member of a group, where the at least one rule is defined by criteria comprising published information about respective users of mobile stations and is received in association with a group address. *Griffin* fails to cure these deficiencies.

Further, the Examiner does not appear to provide any motivation for combining *Griffin* with *Torvinen*, whatsoever. Therefore, it is further submitted that the Examiner has failed to properly establish a *prima facie* case of obviousness.

Further yet, the Examiner has previously admitted using hindsight in his obviousness analysis (see pages 4-5 of the Final Office action of December 12, 2007). This is strictly impermissible (*In re Fine*, 837 F.2d 1071 at 1075, 5 USPQ2d 1596). It is submitted that the number of references relied on by the Examiner to reject the claims (two in the present rejection, and seven in total) is a telling indication of the impermissible use of hindsight.

For the reasons given above, the Board of Appeals is respectfully asked to reverse the rejections of Claims 76-78 under 35 U.S.C. 103(a).

**Rejection of Claim 85 as being unpatentable under 35 U.S.C. § 103(a) over *Torvinen* (U.S. Patent Publication No. 2005/0113123) in view of *Laiho* (U.S. Patent No. 6,097,942).**

In respect of claim 85, the Examiner combines a fourth reference (*Laiho*) with *Torvinen* in respect of a rejection under 35 U.S.C. § 103(a). Therefore, it is submitted that the rejection under *Torvinen* and *Laiho* is deficient for all the reasons argued above with respect to *Torvinen*. Specifically, *Torvinen* fails to teach or suggest a method that includes the steps of publishing information about one or more particular users of respective mobile stations to the communications network, and receiving at least one rule for defining a member of a group, where the at least one rule is defined by criteria comprising published information about respective users of mobile stations and is received in association with a group address. *Laiho* fails to cure these deficiencies.

Further, the Examiner's one line statement of motivation to combine, found at page 11 of the Office Action of September 30, 2008, is again a mere conclusory statement of the type prohibited under *KSR International*. Therefore, it is further

submitted that the Examiner has failed to properly establish a *prima facie* case of obviousness.

Further yet, the Examiner has previously admitted using hindsight in his obviousness analysis (see pages 4-5 of the Final Office action of December 12, 2007). This is strictly impermissible (*In re Fine*, 837 F.2d 1071 at 1075, 5 USPQ2d 1596). It is submitted that the number of references relied on by the Examiner to reject the claims (two in the present rejection, and seven in total) is a telling indication of the impermissible use of hindsight.

For the reasons given above, the Board of Appeals is respectfully asked to reverse the rejection of Claim 85 under 35 U.S.C. 103(a).

**Rejection of claim 86 as being unpatentable under 35 U.S.C. § 103 (a) over *Torvinen* (U.S. Patent Publication No. 2005/0113123) in view of *Chandhok et al.* (U.S. Patent Publication No. 2004/0198376).**

In respect of Claim 86, the Examiner combines a fifth reference (*Chandhok*) with *Torvinen* in respect of a rejection under 35 U.S.C. § 103(a). Therefore, it is submitted that the rejection under *Torvinen* and *Chandhok* is deficient for all the reasons argued above with respect to *Torvinen*. Specifically, *Torvinen* fails to teach or suggest a method that includes the steps of publishing information about one or more particular users of respective mobile stations to the communications network, and receiving at least one rule for defining a member of a group, where the at least one rule is defined by criteria comprising published information about respective users of mobile stations and is received in association with a group address. *Chandhok* fails to cure these deficiencies.

Further, the Examiner's statement of motivation to combine, found at page 12 of the Office Action of September 30, 2008, is again a mere conclusory statement of the type prohibited under *KSR International*. The Examiner's motivation found at page 12, stating that, "this modification makes the rule very flexible (dynamic)," is a mere eight words. It is submitted that the Examiner has failed to properly establish a *prima facie* case of obviousness.

Further yet, the Examiner has previously admitted using hindsight in his obviousness analysis (pages 4-5 of the Final Office action of December 12, 2007). This

is strictly impermissible (*In re Fine*, 837 F.2d 1071 at 1075, 5 USPQ2d 1596). Further, it is submitted that the number of references relied on by the Examiner to reject the claims (two in the present rejection, and seven in total) is a telling indication of the impermissible use of hindsight.

For the reasons given above, the Board of Appeals is respectfully asked to reverse the rejection of Claim 86 under 35 U.S.C. 103(a).

**Rejection of Claims 89-92 as being unpatentable under 35 U.S.C. § 103(a) over *Torvinen* (U.S. Patent Publication No. 2005/0113123) in view of *Leigh et al.* (U.S. Patent No. 5,535,426).**

In respect of claims 89-92, the Examiner combines a sixth reference (*Leigh*) with *Torvinen* in respect of a rejection under 35 U.S.C. § 103(a). Therefore, it is submitted that the rejection under *Torvinen* and *Leigh* is deficient for all the reasons argued above with respect to *Torvinen*. Specifically, *Torvinen* fails to teach or suggest a method that includes the steps of publishing information about one or more particular users of respective mobile stations to the communications network, and receiving at least one rule for defining a member of a group, where the at least one rule is defined by criteria comprising published information about respective users of mobile stations and is received in association with a group address. *Leigh* fails to cure these deficiencies.

Further, the Examiner's statement of motivation to combine, found at page 13 of the Office Action of September 30, 2008, is again a mere conclusory statement of the type prohibited under *KSR International*. Therefore, it is further submitted that the Examiner has failed to properly establish a *prima facie* case of obviousness.

Further yet, the Examiner has previously admitted using hindsight in his analysis (pages 4-5 of the Final Office action of December 12, 2007). This is strictly impermissible (*In re Fine*, 837 F.2d 1071 at 1075, 5 USPQ2d 1596). Further, it is submitted that the number of references relied on by the Examiner to reject the claims (two in the present rejection, and seven in total) is a telling indication of the impermissible use of hindsight.

For the reasons given above, the Board of Appeals is respectfully asked to reverse the rejections of Claims 89-92 under 35 U.S.C. 103(a).

**Rejection of Claim 93 as being unpatentable under 35 U.S.C. § 103(a) over *Torvinen* (U.S. Patent Publication No. 2005/0113123) in view of *Requena* (U.S. Patent Publication No. 2002/0126701).**

In respect of Claim 93, the Examiner combines a seventh reference (*Requena*) with *Torvinen* in respect of a rejection under 35 U.S.C. § 103(a). Therefore, it is submitted that the rejection under *Torvinen* and *Requena* is deficient for all the reasons argued above with respect to *Torvinen*. Specifically, *Torvinen* fails to teach or suggest a method that includes the steps of publishing information about one or more particular users of respective mobile stations to the communications network, and receiving at least one rule for defining a member of a group, where the at least one rule is defined by criteria comprising published information about respective users of mobile stations and is received in association with a group address. *Requena* fails to cure these deficiencies.

Further, the Examiner's statement of motivation to combine, found at page 14 of the Office Action of September 30, 2008, which merely states, "This modification enhances the services provided to the mobile stations" is again mere conclusory statement of the type prohibited under *KSR International*. It is submitted that the Examiner has failed to properly establish a *prima facie* case of obviousness.

Further yet, the Examiner has previously admitted using hindsight in his obviousness analysis (pages 4-5 of the Final Office action of December 12, 2007). This is strictly impermissible (*In re Fine*, 837 F.2d 1071 at 1075, 5 USPQ2d 1596). Further, it is submitted that the number of references relied on by the Examiner to reject the claims (two in the present rejection, and seven in total) is a telling indication of the impermissible use of hindsight.

For the reasons given above, the Board of Appeals is respectfully asked to reverse the rejection of Claim 93 under 35 U.S.C. 103(a).

**Claims 94-102 and 103-112 Have Not Been Properly Examined and the Examiner has Failed to Establish a *prima facie* Case of Obviousness for Claims 94-102 and 103-112**

It is noted that the Examiner simply groups Claims 94-102 and 103-112 into one large omnibus rejection, at page 14 of the Office Action of September 30, 2008. The Examiner has the burden of establishing a *prima facie* case of obviousness with respect to each of the claims. Claims 94-102 and 103-112 contain variations compared to the other claims, yet the Examiner has made no attempt to properly examine Claims 94-102 and 103-112, as required. For example, Claim 104 explicitly recites that the first step in the process that the mobile device is configured to perform involves transmitting, to a server adapted to create and manage a group of mobile stations information to be published to the communications network about one or more particular users of respective mobile stations. The various cited references do not teach or suggest this feature. As such, the rejection is again improper and should be withdrawn.

Further yet, it is difficult to even determine what the Examiner's rejections of Claims 94-102 and 103-112 are. The Examiner states that Claims 94-102 are rejected for the same reasons as Claims 65-73, yet Claim 65 is rejected under 35 U.S.C. § 102(e) over *Torvinen* while Claims 66 and 67 appear to be rejected under 35 U.S.C. § 103(a) over *Torvinen* in view of *Amir*. The same problem exists for the Examiner's rejection of claims 103-112. The Appellants further submit that these rejections should be reversed for lack of clarity.

**Conclusion**

It is submitted that Claims 65-71, 74, 75, 79-81, 83, 84, 86, 87, 94-100, 103-110, 113, 114, 116 and 117; Claims 72 and 73; Claims 76-78; Claim 85; Claim 86; Claims 89-92; and Claim 93 are patentable over the prior art. Therefore, it is requested that the Board reverse the Examiner's rejections of Claims 65-71, 74, 75, 79-81, 83, 84, 86, 87, 94-100, 103-110, 113, 114, 116, 72, 73, 76-78, 85, 86, 89-92 and 93 and remand the application to the Examiner for the issuance of a Notice of Allowance.

Respectfully submitted,

/David C. Jenkins/

David C. Jenkins  
Registration No. 42,691  
Eckert Seamans Cherin & Mellott, LLC  
600 Grant Street, 44th Floor  
Pittsburgh, PA 15219  
Attorney for Appellant

(412) 566-1253

## Claims Appendix

### Claim 1-64 (Previously Cancelled)

Claim 65 (Original): A method of creating and managing a group of mobile stations for a communication session in a communications network, the communication session being one in which users of respective mobile stations communicate with one another, the method comprising:

publishing information about one or more particular users of respective mobile stations to the communications network; and

receiving at least one rule defining a member of the group, the at least one rule defining group members based on criteria comprising published information about respective users of mobile stations, the at least one rule being received in association with a group address; and

dynamically populating the group with members, the populating comprising:

determining mobile stations having respective users with published information on the communications network that matches the published information criteria of the at least one rule; and

populating the group with the mobile stations having respective users with published information on the communications network that matches the published information criteria of the at least one rule.

Claim 66 (Original): The method of claim 65, wherein the published information criteria of the at least one rule comprises at least one characteristic of respective users of mobile stations.

Claim 67 (Original): The method of claim 65, wherein the published information criteria of the at least one rule comprises at least one personal preference and/or at least one common interest of respective users of mobile stations.



APPEAL BRIEF

Application Serial No. 10/825,972

Claim 68 (Original): The method of claim 65, wherein the published information criteria of the at least one rule comprises published location information of respective users of mobile stations.

Claim 69 (Original): The method of claim 65, wherein the at least one rule is further defined by a group of pre-selected mobile stations from which to define the group.

Claim 70 (Original): The method of claim 65, wherein the at least one rule further defined by additional criteria comprising location information about mobile stations managed by the communications network, the step of dynamically populating the group further comprising:

determining if the location information about the one or more particular mobile stations matches the location information criteria of the at least one rule; and

wherein the group is populated with members consisting of mobile stations having respective users with published information on the communications network and location information that matches the published information criteria and location information criteria of the at least one rule respectively.

Claim 71 (Original): The method of claim 70, wherein the location information about the one or more particular mobile stations is stored on one or more network servers.

Claim 72 (Original): The method of claim 70, wherein the location information about the one or more particular mobile stations is stored on one or more network servers in Xtensible Markup Language (XML) format.

Claim 73 (Original): The method of claim 65, wherein the at least one rule is stored on one or more network servers in Xtensible Markup Language (XML) format.

APPEAL BRIEF

Application Serial No. 10/825,972

Claim 74 (Original): The method of claim 65, further comprising sending a notification to each member of the group in response to the populating, the notification identifying the respective mobile station or its user as a member of the group.

Claim 75 (Original): The method of claim 74, wherein the notification identifying at least some of the other mobile stations or users of respective membership as members of the group.

Claim 76 (Original): The method of claim 75, wherein the notification excludes anonymous members of the group.

Claim 77 (Original): The method of claim 76, further comprising sending a notification to each member of the group identifying an anonymous member of the group when the anonymous member actively participates in the group.

Claim 78 (Original): The method of claim 65, wherein one or more members of the group may be anonymous members in accordance with the published information about the one or more particular users on the communications network, the at least one rule defining capabilities of anonymous members to passively and/or actively participates in the group.

Claim 79 (Original): The method of claim 65, comprising receiving two or more rules defining a member of the group, the two or more rules being received in association with a common group address, the group being dynamically populated with members in accordance with the two or more rules and at least the published information about the one or more particular users on the communications network.

Claim 80 (Original): The method of claim 79, wherein one of the two or more rules is defined by criteria comprising location information managed by the communications network, the group being dynamically populated with members in accordance with the two or more rules, published information about one or more particular users on the communications network, and location information about one or more particular mobile stations of the communications network.

APPEAL BRIEF

Application Serial No. 10/825,972

Claim 81 (Original): The method of claim 65, wherein the step of determining comprises requesting and receiving notification of one or more particular mobile stations which match the at least one rule.

Claim 82 (Original): The method of claim 81, wherein the step of determining comprises requesting and receiving notification that no particular mobile stations match the at least one rule.

Claim 83 (Original): The method of claim 81, further comprising subscribing to at least one server which provides notification that one or more particular mobile stations match the at least one rule.

Claim 84 (Original): The method of claim 83, further comprising determining an address for each of the at least one server for subscribing, the address being determined from a resource list of addresses for such servers.

Claim 85 (Original): The method of claim 81, further comprising receiving notification of individual matching mobile stations as the individual matching mobile stations are determined by the at least one server to hasten the populating.

Claim 86 (Original): The method of claim 65, further comprising maintaining the group, removing one or more particular mobile stations or users as a member of the group in accordance with the at least one rule.

Claim 87 (Original): The method of claim 86, further comprising receiving notification that one or more particular mobile stations or users no longer matches the at least one rule.

Claim 88 (Original): The method of claim 65, further comprising receiving a change of the at least one rule and managing the members of the group in accordance with the change wherein the step of managing comprises at least one of adding and removing members to the group.

APPEAL BRIEF

Application Serial No. 10/825,972

Claim 89 (Original): The method of claim 65, further comprising extending a search for mobile stations matching the at least one rule.

Claim 90 (Original): The method of claim 89, wherein the subscribing to at least one server extends the search to at least one of different domains and networks.

Claim 91 (Original): The method of claim 83, further comprising further subscribing by one or more of the at least one server to one or more other such servers to extend a search for mobile stations matching the at least one rule.

Claim 92 (Original): The method of claim 91, wherein the further subscribing extends the search for mobile stations to comprise a home network and a roaming network of a first mobile station.

Claim 93 (Original): The method of claim 65, wherein the group comprises a mayday group and the method comprises:

receiving a request from a first mobile station to initiate a group communication with at least one second communication device proximate to the first mobile station; and

populating the mayday group with particular ones of the mobile stations determined in response to pre-defined rules for the mayday group.

Claim 94 (Original): A server for creating and managing a group of mobile stations for a communication session in a communications network, the communication session being one in which users of respective mobile stations communicate with one another, the server comprising:

a communication system for transmitting and receiving messages via the communications network;

a processor coupled to the communication system for processing messages; and

memory coupled to the processor for storing instructions to configure the processor to:

publish information about one or more particular users of respective mobile stations to the communications network; and

receive at least one rule defining a member of the group, the at least one rule defining group members based on criteria comprising published information about respective users of mobile stations, the at least one rule being received in association with a group address; and

dynamically populate the group with members, the populating comprising:

determining mobile stations having respective users with published information on the communications network that matches the published information criteria of the at least one rule; and

populating the group with the mobile stations having respective users with published information on the communications network that matches the published information criteria of the at least one rule.

Claim 95 (Original): The server of claim 94, wherein the memory further stores instructions to configure the processor to wherein the published information criteria of the at least one rule comprises at least one characteristic of respective users of mobile stations.

Claim 96 (Original): The server of claim 94, wherein the memory further stores instructions to configure the processor to wherein the published information criteria of the at least one rule comprises at least one personal preference and/or at least one common interest of respective users of mobile stations.

Claim 97 (Original): The server of claim 94, wherein the memory further stores instructions to configure the processor to wherein the published information criteria of the at least one rule comprises published location information of respective users of mobile stations.

APPEAL BRIEF

Application Serial No. 10/825,972

Claim 98 (Original): The server of claim 94, wherein the memory further stores instructions to configure the processor to wherein the at least one rule is further defined by a group of pre-selected mobile stations from which to define the group.

Claim 99 (Original): The server of claim 94, wherein the at least one rule further defined by additional criteria comprising location information managed by the communications network, the step of dynamically populating the group further comprising:

determining if the location information about the one or more particular mobile stations matches the location information criteria of the at least one rule; and

wherein the group is populated with members consisting of mobile stations having respective users with published information on the communications network and location information that matches the published information criteria and location information criteria of the at least one rule respectively.

Claim 100 (Original): The server of claim 99, wherein the location information about the one or more particular mobile stations is stored on one or more network servers.

Claim 101 (Original): The server of claim 99, wherein the location information about the one or more particular mobile stations is stored on one or more network servers in Xtensible Markup Language (XML) format.

Claim 102 (Original): The server of claim 94, wherein the at least one rule is stored on one or more network servers in Xtensible Markup Language (XML) format.

Claim 103 (Original): A method of operating a server for creating and managing a group of mobile stations for a communication session in a communications network, the communication session being one in which users of respective mobile stations communicate with one another, the method comprising:

publishing information about one or more particular users of respective mobile stations to the communications network; and

receiving at least one rule defining a member of the group, the at least one rule defining group members based on criteria comprising published information about respective users of mobile stations, the at least one rule being received in association with a group address; and

dynamically populating the group with members, the populating comprising:

determining mobile stations having respective users with published information on the communications network that matches the published information criteria of the at least one rule; and

populating the group with the mobile stations having respective users with published information on the communications network that matches the published information criteria of the at least one rule.

Claim 104 (Original): A mobile station for initiating a communication session among other mobile stations in a communication network, the communication session being one in which users of respective mobile stations communicate with one another, the mobile station comprising:

a transceiver adapted to transmit and receive messages via the communication network;

a processor coupled to the transceiver, the processor adapted to process messages;  
and

a memory coupled to the processor, the memory adapted to store instructions to configure the processor to:

transmit, to a server adapted to create and manage a group of mobile stations, information to be published to the communications network about one or more particular users of respective mobile stations; and

transmit at least one rule defining a member of the group to the server, the at least one rule defining group members based on criteria comprising published information about respective users of mobile stations,

wherein the at least one rule is associated with a group address and is used to populate the group with members consisting of mobile stations having respective users having published information about the one or more particular users on the communications network that matches the published information criteria of the at least one rule.

Claim 105 (Original):       The mobile station of claim 104, wherein the memory is further adapted to store instructions to configure the processor to transmit information to the server for publication comprising at least one characteristic of the user of the mobile station.

Claim 106 (Original):       The mobile station of claim 104, wherein the memory is further adapted to store instructions to configure the processor to transmit information to the server for publication comprising at least one personal preference and/or at least one common interest of the user of the mobile station.

Claim 107 (Original):       The mobile station of claim 104, wherein the memory is further adapted to store instructions to configure the processor to transmit information to the server for publication comprising at published location information of the user of the mobile station.

Claim 108 (Original):       The mobile station of claim 104, wherein the memory is further adapted to store instructions to configure the processor to transmit the at least one rule being further defined by a group of pre-selected mobile stations from which to define the group.



Claim 109 (Original): The mobile station of claim 104, wherein the memory is further adapted to store instructions to configure the processor to transmit the at least one rule being further defined by additional criteria comprising location information, wherein the location information is used to determine whether the one or more particular mobile stations matches the location information criteria of the at least one rule, and

the group is populated with members consisting of mobile stations having respective users with published information on the communications network and location information that matches the published information criteria and location information criteria of the at least one rule respectively.

Claim 110 (Original): The mobile station of claim 109, wherein the location information about the one or more particular mobile stations is stored on one or more network servers.

Claim 111 (Original): The mobile station of claim 109, wherein the location information about the one or more particular mobile stations is stored on one or more network servers in Xtensible Markup Language (XML) format.

Claim 112 (Original): The mobile station of claim 104, wherein the at least one rule is stored on one or more network servers in Xtensible Markup Language (XML) format.

Claim 113 (Original): A method of operating a mobile station for initiating a communication session among other mobile stations in a communication network, the communication session being one in which users of respective mobile stations communicate with one another, the method comprising:

transmitting information about one or more particular users of respective mobile stations to a server adapted to create and manage a group for publishing to the communications network; and

transmitting the at least one rule defining a member of the group to the server, the at least one rule defining group members based on criteria comprising published information about respective users of mobile stations,

wherein the at least one rule is associated with a group address and is used to populate the group with members consisting of mobile stations having respective users having published information about the one or more particular users on the communications network matches the published information criteria of the at least one rule.

Claim 114 (Original): A method of creating and managing a group of mobile stations for a communication session in a communications network, the communication session being one in which users of respective mobile stations communicate with one another, the group being associated with a group address and being defined by at least one rule, the method comprising:

publishing an interest of one or more users to the communications network; and

determining mobile stations having respective users with an interest published to the communications network which matches an interest for participating in the group defined by the at least one rule; and

dynamically populating the group with members comprising mobile stations having respective users with an interest published to the communications network which matches the interest for participating in the group defined by the at least one rule.

Claims 115 (Original). The method of claim 114, wherein the publishing step comprises publishing an interest in participating in a particular dynamic group or an interest in participating in dynamic groups generally.

Claim 116 (Original): The method of claim 114, wherein the publishing step comprises publishing an interest comprises at least one personal preference and/or at least one common interest of respective user.

APPEAL BRIEF

Application Serial No. 10/825,972

Claim 117 (Original):        The method of claim 114, wherein mobile stations are determined from a subset of pre-selected mobile stations or pre-selected users of the mobile stations.

APPEAL BRIEF  
Application Serial No. 10/825,972

**Evidence Appendix**

None.

APPEAL BRIEF  
Application Serial No. 10/825,972

**Related Proceedings Appendix**

None.